

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF

**ANNISTON ARMY DEPOT
7 FRANKFORD AVENUE
ANNISTON, ALABAMA 36201**

USEPA ID NUMBER AL3 210 020 027

Administrative Order NO. 10-XX-HW

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Hazardous Wastes Management and Minimization Act of 1978, (AHWMMA), Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the ADEM Administrative Code, promulgated thereunder, the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") makes the following FINDINGS:

1. Anniston Army Depot (hereinafter referred to as "ANAD" , "facility", or "the owner") owns and operates facilities at 7 Frankfort Avenue, Anniston, Alabama (assigned EPA Identification Number AL3 210 020 027). ANAD's primary activities involve the storage of munitions; the disassembly, cleaning, refurbishing and reassembly of military vehicles and weapons; and the treatment of chemical agent, and conventional and chemical agent munitions. ANAD has an AHWMMA Permit for the treatment and storage of hazardous waste.
2. The Alabama Department of Environmental Management is a duly constituted department of the state of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act, 42 U.S.C. §§ 6901 to 6992k, as amended. In addition, the Department is authorized to administer and enforce the

provisions of the Alabama Hazardous Wastes Management and Minimization Act, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.).

4. On January 22, 2003, ANAD provided a briefing to the Department explaining the use of a flash furnace in the TOW Missile Recycling Program. During the briefing ANAD contended that the flash furnace would not require a RCRA permit for operation during this program. ADEM explained to ANAD that if missile components placed into the flash furnace contained energetic material that was thermally destroyed by the furnace, the furnace would require a RCRA permit.

On January 28, 2003, ADEM conducted a site visit to the ANAD TOW Missile Recycling Center to observe the portion of the process where energetics were removed from other missile components. ADEM observed that none of the metal parts being sent to the flash furnace had any more than a light dust on the surface which had been in contact with the energetic.

On June 20, 2003, ANAD sent the Department a letter requesting concurrence that no RCRA permit was required for the flash furnace being used in the TOW Missile Recycling Program.

On July 9, 2003, the Department replied to ANAD's June 20th letter providing concurrence that as long as the metal parts that were placed into the flash furnace did not contain any more energetics than that observed during the January 28th visit, the flash furnace would not require a RCRA permit. The letter warned that "If processing methods or missile configurations change that result in additional energetic being retained on the metals, the additional quantity of energetic may cause the material to be considered a reactive hazardous waste, and would require the flashing furnace to have a RCRA permit." The letter expressed a willingness for ADEM to work with ANAD to resolve this issue if future processing resulted in additional quantities of energetic being retained on the metal parts.

5. Based on violations discovered during an inspection of ANAD on September 23 – 25, 2003, ADEM issued Administrative Order No. 04-66-HW to ANAD. The Order fined ANAD \$19,950 for several violations including the following violation:

Hazardous waste was being stored on-site for more than 90 days without the proper permit, in violation of ADEM Admin. Code R. 335-14-8-.01(1)(c). The waste was stored in thirteen (13) roll-offs and one 55-gallon drum.

6. On June 23, 2009, ADEM Governmental Hazardous Waste personnel attended a meeting with ANAD personnel and conducted a site visit to ANAD Building 381, The TOW Missile Recycling Center. The purpose of the meeting and site visit were to evaluate the facility's compliance with ANAD's AHWMMMA permit and all applicable requirements of Division 14 of the ADEM Administrative Code. During the meeting and evaluation of the TOW Missile Recycling Center, the following violations were observed:

A. As part of the general operation at the TOW Missile Recycling Center, the TOW Missile's flight motors are sent through a flash furnace. Although the motors are cored to remove the majority of the propellant prior to being sent to the flash furnace, the process does not remove the entire quantity of the energetic from the flight motor casings. Because the propellant remaining in the flight motor casings meets the definition of a characteristic hazardous waste, the action of processing the motors in a flash furnace to destroy the remaining propellant constitutes treatment of a hazardous waste. ANAD is in violation of Condition I.A.1. of the facility's AHWMMMA Permit which prohibits any treatment of hazardous waste not specifically authorized by the permit. ANAD is also in violation of ADEM Administrative Code R. 335-14-8-.01(1)(c) which requires an AHWMMMA permit issued by the Department for the treatment of hazardous waste.

B. Since the beginning of the TOW Missile Recycling Program in January of 2003, ANAD has amassed and stored 108,090 pounds of hazardous waste propellant generated at the TOW Missile Recycling Center. When the propellant was removed from the TOW flight motor, it ceased to be usable as a component of the TOW missile or any other military munition under ADEM Admin. Code r. 335-14-7-.13(3), but became eligible for management as a recyclable material. The facility has reported to the Department that the waste propellant was to be recycled into commercial products (i.e.

managed as a recyclable material). Recyclable materials become a solid waste if speculatively accumulated (ADEM Admin. Code r. 335-14-2.01(2)(c)(4)). Speculative accumulation occurs if less than 75% by weight or volume of a recyclable material on hand at the beginning of a calendar year is not recycled during that calendar year (ADEM Admin. Code r. 335-14-1.02(1)(a)3.(i)(III)). ANAD has not recycled any of the propellant that has been removed from TOW flight motors. The material became a solid waste when speculative accumulation of it began in January 2005.

ANAD has not claimed that the storage was necessary to accumulate a sufficient quantity to facilitate proper recovery, treatment, or disposal. Due to this situation, ANAD is in violation of Condition II.R.2.b. of the facility's AHWMMMA Permit and ADEM Administrative Code r335-14-9-.05 which prohibits the storage of hazardous waste for longer than one year without proving the storage was solely for the purpose of accumulating a quantity necessary to facilitate proper recovery, treatment, or disposal.

C. The waste is stored in 10 igloos that are not designated as storage units on ANAD's current AHWMMMA permit; therefore, ANAD is in violation of ADEM Administrative Code r. 335-14-8-.01(1)(c), which requires an AHWMMMA permit issued by the Department for the storage of hazardous waste.

As a result of the violations listed above, a Notice of Violation was issued to the facility by the Department on July 16, 2009.

7. The recycling and reuse of missile systems such as the TOW is an environmentally preferable method of demilitarization as compared to other methods commonly used by DoD (e.g., open-burning and open detonation), and as such is encouraged. However, such preferred recycling and reuse must be done in compliance with applicable regulations, requirements, and standards.

8. On January 13, 2010, ANAD submitted documentation to the Department acknowledging the facility's failure to perform monthly inspections of the boundary which encompasses all potential areas where ejected material may fall beyond the immediate area of the active portion of the Open Detonation (OD) unit. This monthly inspection is required by

Condition V.D.2.d.ii. of the facility's AHWMMMA Permit. This inspection has not been completed since the September 25, 2009 issuance of the facility's AHWMMMA Permit modification.

9. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violations, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violations upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100 or exceed \$25,000 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation.

In arriving at the civil penalty assessed in this Order, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The violations involved the improper management of hazardous waste resulting in the potential for the release of hazardous constituents to the environment and possible harm to human health and the environment.

B. **THE STANDARD OF CARE:** By committing these violations, ANAD did not exhibit a standard of care sufficient to prevent the violations.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** ANAD received economic benefit from these violations. Avoidance of an AHWMMMA Permit for the treatment and storage of hazardous waste in the 10 igloos saved money that would have been spent on permitting expenses.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** ANAD has failed to adequately address the violations.

E. HISTORY OF PREVIOUS VIOLATIONS: The Operator has a history of violations and non-compliance. Within the last 84 months, ANAD has received six (6) Warning Letters, eleven (11) Notices of Violation, and two (2) Consent Orders. One of the orders (04-66-HW) cited the same storage violation as is cited in this order.

F. THE ABILITY TO PAY: The Operator has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code §§ 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$100,660.00 (see attachment) is appropriate and consistent with the historical penalty range imposed by the Department for similar violations.

H. A significant amount of the civil penalty assessed in this order is due to costs that were avoided when hazardous waste was stored and treated without obtaining an AHWMMMA permit.

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code §22-22A-5(10), 22-22A-5(18), 22-30-20 and 22-30-19(a) and (b), (2006 Rplc. Vol.), it is hereby Ordered:

A. That except as specifically provided in paragraph D below, immediately upon the receipt of this Order and continuing each and every day thereafter, ANAD will not treat hazardous waste without first obtaining an AHWMMMA permit for the treatment of hazardous waste as required by ADEM Admin. Code r. 335-14-8-.01(1)(c) and Condition I.A.1. of the facility's AHWMMMA Permit.

B. That except as specifically provided in paragraph D below, immediately upon the receipt of this Order and continuing each and every day thereafter, ANAD will not store hazardous waste without first obtaining an AHWMMMA permit for the storage of hazardous waste as required by ADEM Admin. Code r. 335-14-8-.01(1)(c) and Condition II.R.2.b. of the facility's AHWMMMA Permit.

C. That except as specifically provided in paragraph D below, immediately upon the receipt of this Order and continuing each and every day thereafter, ANAD will not store hazardous waste for longer than one year without proving the storage was solely for the purpose of accumulating a quantity necessary to facilitate proper recovery, treatment, or disposal as required by Condition II.R.2.b. of the facility's AHWMMMA Permit and ADEM Administrative Code r. 335-14-9-.05.

D. That, not later than 180 days from the receipt of this Order, ANAD shall either submit a modification request for their existing AHWMMMA permit to include the flash furnace, storage igloos, or both as regulated treatment or storage unit(s) or shall submit to the Department a complete Closure and Contingent Post-Closure Plan acceptable to the Department for those units for which a permit modification is not requested. All Closure Plans shall be in accordance with the requirements of ADEM Administrative Code r. 335-14-5-.07(2) to 335-14-5-.07(6). All Contingent Post Closure Plans shall be in accordance with ADEM Administrative Code r. 335-14-5-.07(7) to 335-14-5-.07(11). In addition, Closure and Contingent Post Closure Plans for the flash furnace shall be in accordance with ADEM Administrative Code r. 335-14-5-.09(9); Closure and Contingent Post Closure Plans for the storage igloos shall be in accordance with ADEM Administrative Code r. 335-14-5-.15(12). The closure plan(s) and contingent post-closure plan(s) shall address all areas of soil and groundwater contamination identified by a site assessment. Said plan(s) shall also include an implementation schedule, proposed cleanup standards and justification, and a full description of the methods by which these sites will be remediated and by which attainment of cleanup standards will be confirmed. Finally, said plans shall comply with all requirements of ADEM Administrative Code r. 335-14-6-.07, and shall be submitted with and accompanied by applicable fees.

E. If ANAD elects to submit a modification request for their existing AHWMMMA permit to include the flash furnace or storage igloos as regulated treatment or storage unit(s) as allowed in paragraph C above, the following conditions apply.

1. That, within 180 days of the receipt of this Order, ANAD shall submit a modification request for their existing AHWMMMA permit to include the flash furnace and storage igloos as elected by ANAD under paragraph D above, as regulated treatment or storage unit(s).

2. That, within 180 days of the receipt of this Order, ANAD shall submit a plan acceptable to the Department which outlines procedures for the re-use as product, recycling, and disposal of the accumulated milled TOW missile flight motor propellant by a specified date. The plan shall include an implementation schedule and a provision that ANAD shall provide monthly status reports to the Department on the progress toward completion of the plan.

3. That, within the timeframe specified in each written correspondence from the Department concerning the permit modification process, ANAD shall complete actions and submit information requested by the correspondence.

4. That immediately upon the receipt of this Order, ANAD must complete the following actions until the permit modification discussed above is finalized.

a. Manage containers and the storage igloos addressed by the permit modification in accordance with ADEM Admin. Code r. 335-14-5-.09.

b. Manage the flash furnace addressed by the permit modification in accordance with ADEM Admin. Code r. 335-14-5-.24(2) & (3). The explosive feed rate will be limited to half of the current rate of 5.0 pounds Net Explosive Weight (NEW) per tray which is equivalent to 2.5 pounds NEW per tray.

F. If ANAD elects to submit a complete Closure and Contingency Post-Closure Plan for the flash furnace or storage igloos as allowed in paragraph D above, the following conditions apply.

1. That, within 180 days after notification of the Department's approval of each closure plan, ANAD must complete closure activities of all hazardous waste management units in accordance with that approved Closure Plan.

2. That, within sixty days after completion of closure of each hazardous waste management unit, ANAD shall submit to the Department all certifications and notices of closure in accordance with all requirements of ADEM Administrative Code r. 335-14-5-.07(6), and, if clean closure is not achieved, ANAD shall comply with all applicable requirements of ADEM Administrative Code r. 335-14-5-.07(7) through 335-14-5-.07(10) within the time frames specified in the regulations.

3. That, in the event either the Department or ANAD determines that clean closure of any hazardous waste management unit identified in this order or the assessment required by D above cannot be accomplished, ANAD shall implement the approved contingent Post-Closure Plan for that unit. ANAD shall also, within one hundred eighty (180) days of a determination that clean closure of any hazardous waste management unit identified in the assessment cannot be accomplished, submit to the Department a complete Post-Closure Permit Application prepared in accordance with ADEM Administrative Code r. 335-14-8 for the purposes of conducting post-closure care activities pursuant to ADEM Administrative Code r. 335-14-5 standards. The Post-Closure Permit Application must include, at a minimum, all applicable information required by ADEM Administrative Code r. 335-14-8-.02(5). Applicable fees must accompany the Post-Closure Permit Application.

G. If ANAD does not elect to submit a modification request described in paragraph H below for their existing AHWMMMA permit to modify the inspection requirements at the Open Detonation (OD) area described in paragraph 8 above, the facility shall immediately upon receipt of this Order and continuing each and every day thereafter complete all area inspections of the OD area as required Condition V.D.2.d.ii. of the facility's AHWMMMA permit.

H. If ANAD elects to submit a modification request for their existing AHWMMMA permit to modify the inspection requirements at the OD area described in paragraph 8 above, the following conditions apply.

1. That, within 180 days of the receipt of this Order, ANAD shall submit a modification request acceptable to the Department for their existing AHWMMMA permit to modify the inspection requirements at the OD area described in paragraph 8 above.

2. That, within 180 days of the receipt of this Order, ANAD shall submit a plan acceptable to the Department which outlines the operation of the OD area from the effective date of this Order until issuance of the permit modification. The plan shall include an implementation schedule and a provision that ANAD shall provide monthly status reports to the Department on the progress toward completion of the plan.

3. That, within the timeframe specified in each written correspondence from the Department concerning the permit modification process, ANAD shall complete actions and submit information requested by the correspondence.

4. That immediately upon the receipt of this Order, ANAD will not operate the OD area unless

a. the facility is in full compliance with all portions of the permit pertaining to the OD area, or

b. the facility is following a plan acceptable to the Department (see paragraph H.2 above) and is submitting a permit modification as described in paragraph H.1 above. (Note: ANAD submitted a proposed plan for the operation of the OD area until the issuance of a permit modification on February 19, 2010.)

I. That, not later than forty-five days from the receipt of this Administrative Order, ANAD shall pay to the Department a civil penalty in the amount of **\$100,660.00** for the violations cited in this Order. All penalties due pursuant to this Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

**Office of General Counsel
Alabama Department of Environmental Management
Post Office Box 301463
Montgomery, AL 36130-1463**

All checks shall reference ANAD's name and address, and the ADEM Administrative Order number of this action.

J. That, immediately upon receipt of this Order and continuing thereafter, ANAD shall comply with all terms, conditions, and limitations of the Alabama Hazardous Wastes Management and Minimization Act of 1978, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

K. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and, therefore, unenforceable, the remaining provisions hereof shall remain in full force and effect.

L. That issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against ANAD for the violations cited herein.

M. That failure to comply with the provisions of this Order shall constitute cause for commencement of legal action by the Department against ANAD for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this ____day of June 2010

Lance R. LeFleur
Director

ATTACHMENT A

Penalty Calculation Worksheet

Anniston Army Depot

AL3210020027

Anniston, AL

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Operation of thermal treatment unit without permit modification	1	\$1,000	\$0	\$0
Operation of storage units without permit modification	10	\$10,000	\$0	\$19,550
Land Disposal Restrictions	1	\$1,000	\$0	\$0
Totals:	12	\$12,000	\$0	\$19,550

Economic Benefit*: \$69,110

Mitigating Factors: \$0

Ability to Pay*: \$0

Other Factors: \$0

Total Civil Penalty: **\$100,660**